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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,333	03/29/2004	Mark Howard Krietzman	ChiWorks Stick 01	5082
7590 11/17/2005			EXAMINER	
Mark Krietzman P.O. Box 3185 Palos Verdes, CA 90274			LEWIN, ALLANA	
			ART UNIT	PAPER NUMBER
			3764	
DATE MAILED: 11/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/813,333

Applicant(s)

KRIETZMAN, MARK HOWARD

Examiner

Allana Lewin

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/7/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8,9,14,16 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8,9,14,16 and 18-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

The applicant is reminded that claims 10-13, 15 and 17 are drawn to non-elected species and are therefore not under consideration by the examiner.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8, 9, 14, 16, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Jullien (FR Pat. No. 2,564,735).
3. Regarding claims 8, 9, 14, 16, applicant is referred to paragraph 5 of the Office action dated October 4<sup>th</sup>, 2005 as well as the "Response to Arguments" section below.
4. Regarding claims 21 and 22, Jullien teaches a guide body having a side wall with a surface (see proximate lead line 3 and 15), where a guide path lies in a plane parallel to the surface.
5. Claims 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Berne (US Pat. No. 2,921,791).

6. Berne discloses an exercise device with a base (see proximate lead line 1), a guide body comprising a first flat side wall and a second side wall spaced from and parallel to each other (see proximate lead line 8), a stick member (see proximate lead line 2), a pivot (see proximate lead line 11), and two cylinders providing resistance (see proximate lead line 13).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jullien in view of von Othegraven (US Pat. No. 4,517,966).

9. Applicant is referred to paragraphs 8-10 of the Office action dated October 4<sup>th</sup>, 2005.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jullien in view of Weiss.

11. Jullien, as discussed above and in the Office action dated October 4<sup>th</sup>, 2005, does not disclose a means for constraining the rotational movement of the stick member by a pin or rod member.

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12. Weiss discloses an exercise apparatus comprising a pivotal stick member wherein the pivot is fixed by and therefore constrained by a pivot rod (see proximate lead line 138).

13. Based on the teachings of Weiss it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized such a means of fixing or constraint in the Jullien device. This modification would not alter the function of the device or the way in which it is used, but would merely constrain movement to only one guide path. Furthermore, it is known in the art to provide a pin or rod member in order to achieve this constrained movement. Even though a single or unique guide path has not been recited in the claim, or specifically the employment of a pin or rod member, Jullien in view of Weiss demonstrates the ubiquity of such a feature.

### ***Response to Arguments***

14. Applicant's amendments filed October 7<sup>th</sup>, 2005 have been fully considered but they are not persuasive. The prior art cited in the Office action dated October 4<sup>th</sup>, 2005 meets the limitations presented by the applicant in the amended claims and therefore the rejection stands.

15. Jullien teaches a guide body having a surface (see proximate lead line 15) that defines a guide path and that constrains the rotational movement of the stick member along the guide path. This surface confines the pivot and therefore constrains the movement of the stick member about a single longitudinal axis. The stick is not free to move about any given axis. Furthermore, a defined guide path lies in a plane parallel to

a side wall of the guide body. The applicant has not limited the claim to a single or unique guide path that is parallel to a side wall of the guide body and therefore has not overcome the teaching of the prior art.

***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571-272-5560. The examiner can normally be reached on Monday-Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AL  
10/31/2005

  
STEPHEN R. CROW  
PRIMARY EXAMINER  
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